

DW 00-247

DANIELS LAKE WATER WORKS, INC.

**Investigation into Quality of Service and
Continued Operation as a Viable Public Utility**

**Order Scheduling Hearing on Failure to Cooperate in Transfer of System and Establishing
Surcharge**

ORDER NO. 24,604

March 24, 2006

I. BACKGROUND

Daniels Lake Water Works, Inc. (Daniels Lake) is a regulated public utility pursuant to RSA 362:2 and RSA 362:4 that delivers water service to approximately 30 customers in a limited area of the Town of Weare, New Hampshire.¹ On December 22, 2000, the New Hampshire Public Utilities Commission (Commission) issued Order No. 23,604² which placed Daniels Lake in receivership pursuant to RSA 374:47-a and, on December 29, 2000, the Commission designated Water System Operators, Inc. (WSO) to serve as the temporary operator of Daniels Lake during receivership.

Order No. 23,604 also directed Staff to investigate a resolution of the problems with management of Daniels Lake. On February 6, 2004, Staff filed a report recounting WSO's interest in acquiring Daniels Lake. On December 30, 2004, however, Staff advised that WSO was no longer interested in pursuing the acquisition, due to other business considerations.

The Commission's Audit Staff conducted a review of the financial records of the Daniels Lake system and advised Commission Staff, on February 22, 2006, that Daniels Lake

¹ Daniels Lake was first authorized to do business as a public utility in 1995. *See Daniels Lake Water Works, Inc.*, 80 NH PUC 671 (October 24, 1995).

² For the history of the Commission's investigation regarding receivership for Daniels Lake, *see Daniels Lake*

owed WSO \$15,600. The audit also indicated that a rate increase of \$7 per customer per month was necessary to meet on-going expenses and avoid any further accumulation of debt to WSO. The \$7 increase, however, would not recover the \$15,600 debt to WSO. Staff filed a letter on February 22, 2006, attaching the Audit Staff report and recommending a rate increase of \$7 per customer per month for water service delivered by Daniels Lake. Staff noted that Daniels Lake's rates had not changed since it was first franchised in 1995 and opined that the current rate may be unreasonably low. Staff indicated that customers would pay \$42 per month, up from \$35 per month, if the Commission approved a \$7 increase.

Staff also recommended that a surcharge of \$31 per month be added to each customer bill, to begin repayment to WSO for the \$15,600 debt. Staff stated that the collection of a \$31 surcharge, based on 28 customers taking service, would repay WSO over an 18-month period. Staff noted that if a transfer of ownership occurred, an agreement could be put in place to enable WSO to recover the full amount.

Staff also informed the Commission that Pennichuck East Utility, Inc. (PEU) had offered to acquire the assets of Daniels Lake. Staff averred that in a telephone conversation with Josef Fitzgerald, the owner of Daniels Lake, Mr. Fitzgerald pledged to cooperate fully to transfer Daniels Lake to a new owner. Staff noted, however, that, to date, Mr. Fitzgerald has not responded to PEU's offer.

Staff stated its belief that Mr. Fitzgerald's lack of cooperation is preventing an end to the receivership of Daniels Lake and transfer of the water system to a new owner. Staff urged the Commission to order Mr. Fitzgerald's appearance before the Commission to address his failure to cooperate on transfer of the system. Staff further noted that resulting from a

previous order in Docket No. DW 99-133, Daniels Lake remains liable for fines for failure to file annual reports. Staff recommended that the Commission also notice this issue for Mr.

Fitzgerald's appearance so that all outstanding issues may be resolved in one proceeding.

II. COMMISSION ANALYSIS

In Order No. 23,604 (December 22, 2000), the Commission placed the Daniels Lake system in receivership. Since that time, WSO has operated the system while the Commission sought a long-term solution to the ownership of this utility. We must resolve the following issues: the lack of cooperation by Mr. Josef Fitzgerald in transfer of the system to a new owner; the inadequacy of the rates charged to cover the ongoing cost of service in the system; and the \$15,600 due WSO for services delivered.

We first address the apparent refusal on the part of Mr. Fitzgerald to cooperate in the transfer of the water system to a new owner or to otherwise take responsibility for the system.

In Order No. 23,604 placing the system in receivership, the Commission made it clear that it expected Mr. Fitzgerald's full cooperation in effecting an orderly termination of his ownership. We will direct Mr. Fitzgerald to appear at hearing to respond to Staff's assertion that he has not cooperated and to show cause why he should not be subjected personally to a penalty of up to \$10,0000 pursuant to RSA 365:42. We will also consider at the time, whether referral to the Office of Attorney General, to institute an action against Mr. Fitzgerald pursuant to RSA 374:41, is warranted.

As to the inadequacy of the rates, Staff recommends that a rate increase be approved to cover ongoing costs of operating the Daniels Lake system incurred by the receiver. Staff reports that an increase of \$7 per month per customer will accomplish this. Staff also

recommends a surcharge of \$31 per month per customer for a period of 18 months, to recover the \$15,600 owed to WSO. A review of the Audit Staff's report reveals that a significant portion of the amounts owed to WSO arise from repairs to the system in June of 2004 for \$2,143 and November of 2005 for \$3,598. These amounts and the ongoing deficiency in the rates being charged have caused the build-up of the amount owed to WSO. We will consider Staff's recommendation and the appropriate amount and length of the surcharge at the hearing.

Based upon the foregoing, it is hereby

ORDERED, that a hearing be held on April 18, 2006 at 1:30 p.m. at which Josef Fitzgerald is directed to appear and state under oath his intentions regarding the transfer of the utility to a new owner or otherwise take responsibility for the system; and it is

FURTHER ORDERED, that the April 18, 2006 hearing shall also address the proposed rate change and proposed surcharge; and it is

FURTHER ORDERED, that Mr. Fitzgerald show cause why he should not be penalized pursuant to RSA 365:42 and why this matter should not be referred to the Attorney General pursuant to RSA 374:41; and it is

FURTHER ORDERED, that the Executive Director shall provide notice of this hearing to customers.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of March, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary